

IN THE

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Supreme Court of the United States

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OCTOBER TERM, 1978

No. 78-1855

PAUL W. MILHOUSE and EWING T. WAYLAND,
 Being Those Persons upon Whom Service of Process Was
 Attempted on Behalf of **THE UNITED METHODIST**
CHURCH, a Named Defendant in the Underlying Action,

Petitioners,

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA,

Respondent.

and

CHARLES W. TRIGG, et al.,

Real Parties in Interest

**PETITION FOR WRIT OF CERTIORARI
 TO THE UNITED STATES COURT OF APPEALS
 FOR THE NINTH CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI
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FOR THE NINTH CIRCUIT**

To the Honorable Chief Justice and Associate Justices
of the Supreme Court of the United States:

The Petitioners, Paul W. Milhouse and Ewing T. Wayland, being the persons upon whom service of process was attempted in the name of The United Methodist Church, a named defendant in the underlying action, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on May 13, 1979, denying their Petition for Writ of Mandamus.

OPINIONS BELOW

The judgment of the United States Court of Appeals, set forth in an unpublished order, is reproduced as Appendix A to this Petition. The order of United States District Court for the Southern District of California (entered August 23, 1978), for which review by mandamus was sought, is reproduced as Appendix B. The District Court rendered an oral opinion on the matters involved herein on August 15, 1978, and the transcript of the oral opinion is reproduced as Appendix C.

JURISDICTION

The judgment of the Court of Appeals was entered on March 13, 1979. This petition was filed within 90 days of that date. This Court has jurisdiction to review the judgment by Writ of Certiorari pursuant to 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

This case presents what appears to be the first attempt to bring a suit for damages against an entire international religious denomination as an "unincorporated association" under Rule 17(b) of the Federal Rules of Civil Procedure. The questions presented are:

1. Can Rule 17(b) of the Federal Rules of Civil Procedure be applied, consistent with the Constitutional guaranty of due process, to make amenable to a suit for damages an international religious denomination which, as a totality, (a) has no officers, executive board, or other decision-making mechanism, so that there is no person or body able to consult with counsel or otherwise speak for the denomination in the course of the litigation and (b) holds no assets of any kind, so that a judgment against the denomination

could only be recovered from the assets of separate jural entities bearing the denominational name?

2. Can Rule 17(b) of the Federal Rules of Civil Procedure be applied, consistent with the Constitutional guaranty of free exercise of religion, to require a religious denomination to appear, answer, respond to discovery and otherwise participate collectively, as a single legal entity, in a suit for damages even though, under the ecclesiastical law and chosen polity of the denomination, the denomination is decentralized and non-authoritarian, there are no denominational funds or executive officers, and the separate entities and individual persons affiliated with the denomination are prohibited from binding one another or speaking for the entire denomination?

CONSTITUTIONAL PROVISIONS AND RULE INVOLVED

This case involves the interpretation of the following provisions:

1. The Fifth Amendment to the United States Constitution, which provides in pertinent part:

"No person shall . . . be deprived of life, liberty or property, without due process of law. . . ."

2. The First Amendment to the United States Constitution, which provides in pertinent part:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . ."

3. Rule 17(b) of the Federal Rules of Civil Procedure, which provides in pertinent part:

"Capacity to Sue or be Sued. The capacity of an individual, other than one acting in a representative capac-

ity, to sue or be sued shall be determined by the law of his domicile. The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States. . . ."

RELATED MATTERS COMING TO THIS COURT

The essential issues raised in this petition will also be raised with finality in the context of a state court proceeding, in a forthcoming petition for Writ of Certiorari to be filed by June 30, 1979 in *Barr, et al. v. United Methodist Church, et al.*, California Court of Appeal, Cause No. 4th Civ. 18244. There, the United Methodist Church is confronted with a default of up to \$366 million if it fails to answer and conduct litigation as a single party defendant. We respectfully request that the instant petition and the petition shortly to be filed in *Barr* be considered for consolidated review by this Court.

STATEMENT OF THE CASE

The petition for mandamus. The mandamus proceeding for which this Court's review is sought arose out of a \$5 million action for common law fraud and violations of the federal securities laws, *Charles W. Trigg, et al. v. Pacific Methodist Investment Fund, et al.*, No. 78-0198-S (S.D. Cal., filed March 27, 1978). The complaint in *Trigg* involves a bond issue made by Pacific Methodist Investment Fund ("the Fund"), a California non-profit corporation. The Fund was established, in order to raise money for a group of homes for the aged, by the Pacific and Southwest Annual Conference of The United Methodist Church, also a California non-profit corporation; it has no connection with any other unit affiliated with the United Methodist Church. Plaintiffs are holders of the Fund's bonds, which are now in default. Seeking to represent the class of all bondholders, the plaintiffs allege a series of misstatements and omissions in connection with the issuance of the bonds.

There are numerous defendants in the *Trigg* case. Plaintiffs have named the Fund, of course, and the Pacific and Southwest Annual Conference which established it. They also named an investment company employed by the Fund, and fourteen individuals who allegedly performed services in issuing the Fund's bonds. Another defendant is the General Council on Finance and Administration of the United Methodist Church ("GCF"), an Illinois non-profit corporation which transmits certain voluntary contributions made by members of local United Methodist churches. The remaining defendant named in the complaint is the United Methodist Church ("the denomination"), alleged to be "an unincorporated association consisting of numerous persons, associations and corporations, which were and are organized and doing business as conferences, boards, commissions, councils and agencies. . . ." First Amended Complaint at

paragraph 3(d). In fact, as detailed below, the denomination is composed of over 45,000 largely independent units, and 10 million individual members, without a common head, managing board, headquarters, or joint assets.

The complaint also alleges that the denomination conspired with the other defendants, that it employed the other defendants as agents, and that it was a "control person" within the meaning of the federal securities laws in respect to the Fund. First Amended Complaint at paragraph 3(c). In an attempt to obtain personal jurisdiction over the denomination, plaintiffs served the present petitioners, Paul W. Milhouse, a former president of the denomination's Council of Bishops, and Dr. Ewing T. Wayland, the General Secretary and Treasurer of the defendant GCFA. Plaintiffs have pointed to no provision of church law giving these individuals any special authority to accept service of process or to speak or act for the entire denomination.

Bishop Milhouse and Dr. Wayland moved to dismiss the complaint, as against the denomination, for want of personal jurisdiction, (1) because the denomination does not have any quasi-corporate structure or centralized administration which would render it an "unincorporated association" amenable to suit under Rule 17(b) of the Federal Rules of Civil Procedure, (2) because no one, under the ecclesiastical law of United Methodism, is authorized to answer the complaint or otherwise speak for the entire denomination, and (3) because they personally had no authority to receive service of process for the entire denomination. The petitioners did not argue for any form of "religious immunity," but rather pointed out that any or all of the separate units composing United Methodism are amenable to suit.

In support of their motion petitioners filed the affidavits of several experts within the United Methodist Church,

explaining the non-authoritarian decentralized structure of the denomination. Plaintiffs responded with an affidavit and chart prepared by their attorney, presenting his personal interpretation (a) of the ecclesiastical law and polity of the denomination and (b) of several documents concerning individual units of the denomination. The plaintiffs offered no expert testimony of any kind to refute the statements made by petitioners' authorities in support of the motion to dismiss.

On August 15, 1978, after considering the materials submitted by the parties and the arguments of counsel, the district court announced in an oral opinion that it would deny petitioners' motion to dismiss. (See Appendix C hereto.) The district court appeared to base its decision primarily on its own reading of church law. Eight days later the court issued a written order denying the motion. (Appendix B hereto.) Petitioners made two separate requests for certification of the question for interlocutory appeal; each was denied. Thereafter, on September 11, 1978, petitioners filed a request for a stay from the Ninth Circuit Court of Appeals, pending their filing of a petition for writ of mandamus. The court of appeals denied the motion on September 14. Because the denomination had not answered at this time, the plaintiffs sought and obtained a default order in the district court against it. That default order against the denomination is presently in effect; the other named defendants, including the specifically named church units, have answered and intend to pursue the litigation on the merits.

On November 2, 1978, Bishop Milhouse and Dr. Wayland filed their petition for writ of mandamus with the court of appeals, urging that the district court be required to grant their motion for dismissal of the denomination as a party defendant. The court of appeals denied the petition on

March 13, 1979, in a one-paragraph order. (Appendix A hereto.)

Suable entities comprising the denomination. As noted in the affidavits which petitioners submitted in support of their motion to dismiss, the ecclesiastical law of the United Methodist Church is officially stated in *The Book of Discipline of the United Methodist Church* (1976), the highest constitutional and legislative pronouncement of the denomination. Affidavit of Dr. Murray H. Lieffer (May 8, 1978), App. Ex. 1, ¶ 5; Affidavit No. 1 of Ewing T. Wayland (May 5, 1978), App. Ex. 2, ¶ 4; Affidavit of Paul Milhouse (May 3, 1978), App. Ex. 4, ¶ 3.¹ The denomination as a whole has never been incorporated. As detailed by *The Book of Discipline*, and explained in the affidavits, the denomination is an aggregation of many largely independent entities held together in what is called "a connectional structure." See *The Book of Discipline*, at 231. There are basically four types of entities within the denomination, defined by the geographical scope of their ministry.

1. First, are the local churches, defined and described in *The Book of Discipline* at ¶¶ 201-271. There are approximately 39,000 local churches affiliated with the United Methodist Church in the United States, and another 4,000 outside this country. Leiffer affidavit, App. Ex. 1, ¶ 10. Each local church is responsible for its own property and its own financial and operating affairs. *Id.* The affairs of each local church are administered by an Administrative Board acting as an executive agency. *The Book of Discipline*, ¶¶ 247-250. No local church has been named as a defendant in the *Trigg* case.

¹ "App. Ex." refers to the exhibits contained in the combined Appendix of Affidavits and Exhibits filed by petitioners with the district court in support of their motion to dismiss.

2. Operating in a broader geographical area, there are other church entities known as "annual conferences." *The Book of Discipline*, ¶¶ 700-751. This term refers to a meeting of clergy and laymen from many local churches in an area, and also refers to the area from which they come. There are 73 annual conferences within the United States and 41 outside. Leiffer affidavit, App. Ex. 1, ¶ 10. The members of the annual conferences regularly meet once a year to review matters of common concern, and to develop and support benevolent programs within their boundaries. *Id.*, ¶ 13. An example of such programs is provided by the retirement homes involved in the present litigation; these are ministries related to the Pacific and Southwest Annual Conference. The funds necessary for such annual conference programs are sought directly or indirectly from the local churches, *The Book of Discipline*, ¶ 711, but an annual conference has no power to bind financially the denomination or any church unit associated with the denomination, other than itself, *id.*, ¶ 702(2).²

The annual conferences may meet more than once a year (*id.*, ¶ 701(4)); they may incorporate (*id.*, ¶ 701(1)); they each have a treasury and a treasurer (*id.*, ¶¶ 717-718). No argument has been raised in this lawsuit about the jural status of the annual conferences or any other constituent units of the denomination. In the *Trigg* case, only one annual conference has been named as a defendant, the Pacific and Southwest Annual Conference, a California non-profit corporation. It has appeared and answered.

3. Next, in order of increasing geographical scope, are fourteen "jurisdictional" and "central" conferences. *The Book of Discipline*, ¶¶ 620-652; Leiffer affidavit, App. Ex.

² United Methodists have not viewed their relationships, *inter se*, as including any agency or permission to bind each other to legal obligation. Leiffer affidavit, App. Ex. 1, ¶ 27.

1, ¶ 21. One of their principal functions is the election of bishops. *Id.*, ¶ 22. The bishops of the denomination ordain and appoint ministers to the local churches, *The Book of Discipline*, ¶¶ 514-515, and preside, without voting, over annual conferences, whose direction the bishops must follow. Leiffer affidavit, App. Ex. 1, ¶ 22. The bishops of the denomination, active and retired, compose the Council of Bishops. *The Book of Discipline*, ¶ 525. This body is essentially a consultative group; it has no power to speak for or control the denomination or to commit any entity within the denomination to action. Leiffer affidavit, App. Ex. 1, ¶ 22; Milhouse Affidavit, App. Ex. 4, ¶ 6. Neither the Council of Bishops nor any of the jurisdictional or central conferences has been named as a defendant in *Trigg*.

4. The national and global operations of the United Methodist denomination are the concern of the remaining denominational entities—the General Conference and general boards. *The Book of Discipline*, ¶¶ 601-612. Every four years, delegates elected by the annual conferences assemble to form the General Conference, which serves as a legislative assembly. Leiffer affidavit, App. Ex. 1, ¶ 18. *The Book of Discipline* is the body of law enacted by the General Conference.³ Only the General Conference can speak for the Church as a whole. *The Book of Discipline*, ¶ 612(1). The General Conferences have established various boards and councils to carry out the work of the Church on a world-wide basis. There are presently 13 such "general" boards. Leiffer affidavit, App. Ex. 1, ¶ 20. All of these boards, and most of their subsidiary units, are incorporated. *Id.* However, the General Conference itself is not a continuing body. It meets quadrennially for approximately two weeks and

³ The highest judicatory of the denomination, charged with interpretation of *The Book of Discipline*, is the Judicial Council. *The Book of Discipline*, ¶¶ 60-63.

then adjourns, *sine die*. It has no offices, and no permanent staff. *Id.*, ¶ 18.

The boards and councils established by the General Conference to perform the Church's world-wide ministry receive their funds from the 10 million individual members of the Church, through the local churches and annual conferences. About 94½% of the amounts donated by members of the denomination remain at the local level, for use by the local churches and annual conferences; the remaining 5½%, contributed for world ministries, transmitted through the General Council on Finance and Administration, is known as "general funds." Wayland affidavit No. 1, App. Ex. 2, ¶ 7. These funds are routed to the General Council on Finance and Administration ("GCFA"), one of the 13 general level boards and an Illinois non-profit corporation. GCFA then acts as conduit to distribute these funds, in the manner specifically budgeted and directed by the General Conference. In this activity it is on occasion referred to as rendering "central treasury" services, but it is not the treasury or treasurer of the entire denomination. Wayland Affidavit No. 1, App. Ex. 3, ¶ 4. In carrying out certain of its functions, GCFA sometimes works with a second board, the General Council on Ministries, which is charged with reviewing the Church's ministries. *The Book of Discipline*, ¶ 1001-1005. There is no question in this case about the jural, suable status of the general level boards. GCFA is the only such board named as a defendant in *Trigg*. It has appeared and answered.⁴

⁴ GCFA contested the "long arm" jurisdiction of a California court in a related case, *Barr, et al. v. The United Methodist Church, et al.*, No. 404611 (Superior Ct., San Diego County) Cause No. 78-300 in this Court, cert. denied, ____ U.S. ___, 99 S.Ct. 281, (1978), but has never asserted that it was not a jural entity, nor did it raise in that case the issues presented here.

The church units listed above are interrelated and interconnected by a common faith and tradition, and by common representation at various conferences. However, they operate with a high degree of independence. There is no chain of command linking these units nor are the levels described above layered vertically in any ascending order of authority. Indeed, the basic constitutional units in the denomination are the 114 annual conferences, and no substantial changes in the organization and constitution of the denomination can be adopted without the concurrence of these conferences. *The Book of Discipline*, §§ 37, 64. In the use of their funds, the separate annual conferences are not subject to the control of other denominational bodies. Leiffer affidavit, App. Ex. 1, ¶ 13; Wayland affidavit No. 1, App. Ex. 2, ¶ 11. Likewise, the general level boards are not subject to the control of any single person or council, but seek to carry out the programs of the General Conference in largely independent fashion. *Id.*, ¶ 20; Wayland affidavit No. 1, App. Ex. 2, ¶ 4.

There is no chief executive person or body to whom the separate entities within the United Methodist denomination are answerable. This and other decentralized characteristics of the denominations are noted by Bishop Tuell in his text, *The Organization of The United Methodist Church* (rev. ed. 1977) at 127-129:

"If someone had a complaint, and wanted to go to the head of the United Methodist Church with it, that head person would be hard to find. One might try the president of the Council of Bishops, but would discover that this person is primarily a presiding officer over the semi-annual meetings of the Council of Bishops. The president has no particular authority in the church at large not possessed by all other bishops

"One might try the general secretary of the General Council on Ministries, but would discover that this person, though head of an agency involved in coordinating the total work of the program agencies of the church, is by no means in charge of the total work of The United Methodist Church. If our complainant went to see the executive head of one of our boards or agencies, he or she would be told that that person has charge of only a certain portion of the work of the church. One might approach the presiding bishop of a session of the General Conference, but would be told that anywhere from fifteen to twenty-five bishops may share in the task of presiding at any quadrennial meeting of the General Conference. If one were to go to the president of the Judicial Council, he or she would be told, 'All we do is decide cases.'

* * *

"This is simply to illustrate the fact that power and authority are widely dispersed within The United Methodist Church, undoubtedly deliberately so. We have inherited from the founders of America a rather keen distrust of too much power centralized in one person. There is not only not a head person, there are no headquarters of our church. This is not necessarily bad, but we should recognize that this general lack of central direction over the years has resulted in our various boards and agencies pretty much going their own independent ways, each developing its own programs which sometimes overlapped with programs of our other agencies and sometimes actually conflicted. . . ."

Except for the quadrennial General Conference, there is no person or group who can speak for or commit the entire denomination to action. The affidavit of Ewing Wayland demonstrates, without contradiction by the plaintiffs below, that the United Methodist Church, in its denominational

entirety and as distinguished from its affiliated organizations, has never:

- (1) employed any person or held any employer identification number;
- (2) held any bank account;
- (3) issued any check, note or draft;
- (4) held legal title to any property, real or personal;
- (5) except for "covenants" of religious cooperation and comity with other religious groups, entered into any contract;
- (6) filed a tax return;
- (7) maintained a denominational headquarters; or
- (8) established any officers for the entire denomination, and specifically, has never had a chief executive or other head person.

App. Ex. 2, ¶ 2.

The plaintiffs in *Trigg* have never specifically shown who they believe controls or can speak for the entire denomination. They have indicated that they would seek to enforce any judgment they obtain against the entire denomination by levying against all gifts of "general funds" made by local church numbers for the support of national and global ministries of the Church, regardless of what unit at a particular time is in possession of such funds.⁵ Thus the possible targets for levy would include United Methodist local churches, the annual conferences, the General Council on Finance and Administration acting as conduit, its twelve sister general boards and any of the hundreds of denominational units for whose religious and charitable ministries the funds are given in the first instance.

⁵ Answer to Petition for Hearing, *Frank T. Barr et al. v. The United Methodist Church, et al.*, 4th Civ. No. 18244 (Supreme Court of California, 1979) at 43 n. 25.

REASONS FOR GRANTING THE WRIT

As a matter of convenience a rule of law has been developed permitting associations which are unincorporated but otherwise possess the characteristics of corporations to be sued in their common names as "unincorporated associations." Rule 17(b), Fed.R.Civ.P. This Court has never defined the minimum requirements necessary to subject an aggregation of individuals to suit as an "unincorporated association." Yet the consequences of this sort of treatment for the individuals or other units alleged to make up the "association" are severe. These consequences include a requirement (a) to defend in a distant forum with which such individuals or units may have no contacts; (b) the necessity of conducting the defense as though the asserted "unincorporated association" were a unified entity even though the alleged associates never provided for or recognized the existence of any such overarching entity; (c) an obligation to produce multitudinous documents or witnesses and to answer interrogatories as an assumed totality without ability to gather the required information or to enforce compliance with discovery demands by other "members" of the asserted "association" and (d) exposure to liability for damages collectible from whatever might be determined in subsequent legal proceeding to constitute "common assets" of the "association" subject to levy and other judgment satisfaction procedures.

Respondents have put forward the definition that any aggregation of individuals promoting a *common objective* under a *common name* is an "unincorporated association." By this loose definition the Christian Church, the peace movement and the "federal judiciary" would seemingly with equal ease be held to constitute an "unincorporated association." By the simple expedient of putting a general name on the caption of a complaint, filed perhaps in Alaska or

any remote forum, all Christians, war protestors or federal judges could be required to defend in that forum, assume obligations of complying with broad discovery demands, and run the risk of a large money judgment against "common assets." No one would know until the ramified litigation was concluded whether the funds of the Catholic Archbishop of Chicago, Connecticut Veterans Against the Vietnam War, or a club composed of federal judges sitting in the federal courts in New York City would be subject to seizure as "common assets" of the alleged unincorporated association.

In the case at bar a loosely structured "connectional" religious denomination, consisting of over 45,000 individual local churches and other related institutions and collectively possessing no common assets, has been subjected to suit as an "unincorporated association."⁶ The suit, if allowed to proceed, seriously jeopardizes the chosen polity of the denomination.

Thus a rule which began as a matter of procedural convenience can become an instrument of injustice if carried to the present extremes. This Court should grant certiorari to clarify the outer parameters and procedural consequences of suits against unincorporated associations in the context

⁶ In the history of Anglo-American jurisprudence prior to the web of Pacific Homes litigation targeted against the United Methodist Church, no major international religious denomination, including United Methodism, other world-wide Protestant faiths, the Roman Catholic Church and the Jewish congregations has been held subject to suit as a legal entity as distinguished from one or more of its jural local churches, diocesan councils, or sub-units, answerable in damages for the acts or omissions of a local unit or affiliated institution.

of major religious systems, rejecting the expansive definition of Rule 17(b) adopted by the district court.

I. RULE 17(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH DUE PROCESS, BE INTERPRETED TO ALLOW AN ACTION FOR DAMAGES TO BE BROUGHT AGAINST AN AGGREGATION OF PERSONS AND ENTITIES WHO HOLD NO COMMON ASSETS, AND WHO HAVE NO CENTRALIZED MANAGEMENT.

In *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344 (1922), this Court changed the laws regarding the capacity of unincorporated associations to be sued, at least on federal claims. Prior to this decision, the general rule had been that "an unincorporated association of persons . . . could only sue or be sued in the names of its members, and their liability had to be enforced against each member." 259 U.S. at 385. The Court held in *Coronado*, however, that this general rule should not be applied to prevent a suit for damages under federal law against the United Mine Workers of America. The Court gave several reasons for its ruling, but primarily emphasized the wealth, power, and cohesiveness of the union as requiring that it be amenable to suit.

"The body governing the union in the interval between conventions is the International Board consisting of the principal officers, the president, vice-president and secretary-treasurer, together with a member from each district. The president has much power. He can remove or suspend International officers, appoints the national organizers and subordinates, and is to interpret authoritatively the constitution, subject to reversal by the International Board. When the Board is not in session, the individual members are to do what he directs them to do." 259 U.S. at 383-84.

"The membership of the union has reached 450,000. The dues received from them for the national and district organizations make a very large annual total, and the obligations assumed . . . are so heavy that an extensive financial business is carried on, money is borrowed, notes are given to banks, and in every way the union acts as a business entity, distinct from its members. *No organized corporation has greater unity of action, and in none is more power centered in the governing executive bodies.*" 259 U.S. at 385.

"It would be unfortunate if *an organization with as great power as this International Union has in the raising of large funds and in directing the conduct of four hundred thousand members in carrying on, in a wide territory, industrial controversies and strikes . . . could assemble its assets to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages . . . would be to leave them remediless.*" 259 U.S. at 388-89. (Emphasis supplied.)

The Court held that the contrary law of the forum state would not prevent the union from being sued on a federal claim in federal court. 259 U.S. at 391.

The rule of the *Coronado* case was codified in Rule 17(b) of the Federal Rules of Civil Procedure, which states that, regardless of its capacity under the laws of the forum state, an unincorporated association "may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right existing under the Constitution or laws of the United States." The Advisory Committee comment on Rule 17(b) states that the rule "follows the existing law as to such associations," and that the existing law is stated in *United Mine Workers v. Coronado Coal Co.* However, the Rule provides no definition or standards for determining what aggregates of persons should be deemed to be "un-

incorporated associations," subject to suit in federal court. Neither have guidelines resulted from lower court decisions.⁷

The present case presents what is possibly the most expansive interpretation to date of the unincorporated association provision of Rule 17(b). Surely, the United Methodist Church bears little resemblance to the union involved in the *Coronado* case. The union had a strong and continuing central management headed by a powerful president; the denomination has no central management and no executive officers whatever. The union held massive funds in its own name; the denomination as such holds no funds. The union engaged in a wide variety of commercial activities as

⁷ Several lower courts have considered problems in the definition of a suable "unincorporated association," but no clear definition has emerged. In *Penrod Drilling Co. v. Johnson*, 414 F.2d 1217, 1222, the court defined the term by reference to 7 C.J.S. Associations § 1, at p. 19 (1937): "An 'association' is a body of persons acting together, without a charter, but upon the methods and forms used by corporations, for the prosecution of some common enterprise." It has been suggested that the "association" as used in Rule 17(b) "refers to associations such as trade unions, fraternal organizations, business organizations, and the like." *Yonce v. Miners Memorial Hospital Assn., Inc.*, 161 F.Supp. 178 (W.D. Va. 1958) (welfare fund of a union held not subject to suit as an unincorporated association), and one court looked to the absence of bylaws, offices, a mailing address, bank accounts, assets and obligations in determining that a committee of a sports association could not be sued as an unincorporated association, *California Clippers, Inc. v. United States Soccer Football Assn.*, 314 F.Supp. 1057, 1068 (N.D. Cal. 1970). Interpreting the parallel provision of its state Rule 17, the Colorado Supreme Court concluded that an unincorporated association should have "responsible officers elected according to by-laws." *Hidden Lake Development Co. v. District Court*, 183 Colo. 168, 173, 515 P.2d 632, 635 (1973). That court said: "the status of an unincorporated association must be founded on more than a bald allegation. To sue as an incorporated association in name only is insufficient. Such legal entity must in fact exist . . ." *Id.*

an entity apart from its members; the denomination as a whole has engaged in no such activity. The denomination is, in fact, a "connection," as it has long been described, of many separately organized church bodies, and it is those suable entities which carry on the denomination's religious work. There is no overarching central management; indeed, apart from the individual members, the local churches, the conferences, the general boards, and their affiliated agencies, there simply is no United Methodist Church against which a legal broadside action can be brought.

The district court did not make any findings of fact to contradict the specific assertions set forth above. And, critically, the district court cited no standards for determining whether a given aggregation should be considered as an "unincorporated association" under Rule 17(b). Rather, this court engaged in a detailed review of *The Book of Discipline*, unaided by expert testimony, and then held that the Church was suable as an unincorporated association because:

(1) *The Book of Discipline* provides that all property of any entity of the denomination (i.e. local churches and other sub-units) is held in trust for the denomination as a whole. Transcript of proceedings, Aug. 15, 1978, Appendix C hereto, at A-10. On the other hand, the expert testimony which was disregarded shows that the trust clause relates to property held by the many separate units of United Methodism through their separate boards of trustees and entities and that there is no title-holding entity known as the United Methodist Church. Leiffer Dep. at 148-149; Wayland Dep. at 226.

(2) Various sections of *The Book of Discipline* provide that the United Methodist Church will assume responsibility for contracts made by and title of property held by either of the two churches which merged to form the denom-

ination. App. C at A-10, 11. Similarly, the expert testimony shows that these sections are to be read in the knowledge that contracts are made and titles held by the individual units constituting the denomination. App. Ex. 2, ¶ 2.

(3) Other paragraphs of *The Book of Discipline* refer to the denomination owning charitable institutions and having employees. App. C at A-11. Again, expert testimony revealed that the institutions and employees referred to are those of the separate units. App. Ex. 2, ¶ 2.

(4) GCFA applied for a federal income tax exemption in the name of the denomination, and administers its "general funds." App. C at A-11. The evidence shows that the Internal Revenue Service followed an administratively convenient course in referring in the exemption ruling issued to General Council on Finance and Administration, to the denominational name. App. Ex. 3 and attachments.

(5) *The Book of Discipline* gives the bishops of the denomination the duty of overseeing or superintending its affairs. App. C at A-12. As shown above (pp. 9-10), the expert evidence is clear that the Council of Bishops simply is not the managing board of all United Methodism. Leiffer Dep. at 142.

(6) The denomination has been involved in other litigation, and has been held by the courts to be a "hierarchical" church. App. C at A-13, 14. This finding represents an erroneous understanding of how the denominational name came to be used in certain litigated cases involving local units and their properties. Frank Jones affidavit, App. Ex. 5.

None of these points as cited by the district court, even as the court interpreted them, contradicts the decentralized, connectional nature of the denomination. Thus, there is no factual basis for any conclusion that the denomination operates with a centralized structure or authoritarian polity.

Obviously, property can be in trust for a loosely organized as well as a tightly organized group. *The Book of Discipline* occasionally refers to the denomination holding property, assuming contracts, or having employees instead of referring to the constituent church bodies and separate entities which actually hold the property, make the contracts, or have the employees. GCFA's application for a group tax exemption merely noted the common status of many entities within the denomination; it nowhere indicated a centralized Church executive. And finally, none of the prior litigation involving the United Methodist Church ever resulted in a finding that the denomination, as a whole, was a jural entity subject to suit. To the contrary, all such litigation was brought or defended by local denominational units. There has never before been a claim for damages against the denomination as a whole.⁸ And, of course, the

⁸ In the entire history of the United Methodist Church and its predecessors, there is only one reported case in which the name of the entire denomination appeared in the caption. *The United Methodist Church v. St. Louis Crossing Independent Church*, 150 Ind. App. 574, 276 N.E.2d 916 (1972). This suit was brought by schismatic members of a local church, seeking an injunction enforcing their claim to the property of the local church. They named the denomination as a defendant, but the action was defended by a district superintendent and local interests, 276 N.E.2d at 917. The capacity of the denomination was not relevant or at issue.

There are three similar trial court actions in Georgia which are unreported. In each case, a dissident group had attempted to take over the property of a local church, and the name "The United Methodist Church" was used by the annual conference and local authorities which actually brought suit against the dissidents, in order to indicate that the interests of all United Methodists were involved. See Jones affidavit, App. Ex. 5, ¶ 4. Nevertheless counsel for plaintiffs insisted below that The United Methodist Church, as an entity, has frequently involved itself in litigation. These representations are not accurate although repeatedly made.

fact that the United Methodist Church is hierarchical does not indicate that it has a highly centralized government, holds assets, or acts as an entity.⁹

The effect of the district court's decision is thus to expand the meaning of "unincorporated association" so as to encompass nearly any aggregation of persons or entities acting under a common name, and with some inter-communication.¹⁰ The "Bell System" would be suable as an unincorporated association under this rationale, as would the "Anti-War Movement", the "Federal Judiciary" and every major religious denomination. Such a result has no basis in this Court's reasoning in the *Coronado* case. If allowed to stand it will necessarily encourage a multiplicity of suits, create enormous practical problems in the conduct of litigation, and result in serious denials of due process.

The present case presents these problems in at least three areas. First, because the district court allowed this suit to

⁹ The term "hierarchical," as developed by courts in determining church property disputes, is used in opposition to the "congregational" form of church government, "in which the autonomy of the local congregation is the central principle." Note, *Judicial Intervention in Disputes over the Use of Church Property*, 75 Harv. L. Rev. 1142, 1143-44. The "connectionism" of the United Methodist Church is simply one form of church government within the broad hierarchical category. *Id.*, at 1144 n.14; *Brady v. Reiner*, 198 S.E.2d 812, 827 (W. Va. 1973).

¹⁰ Indeed, the plaintiffs argued below that the only defining characteristics of an "unincorporated association" are common name and common purpose. "There is no complicated formula for determining what an unincorporated association is—it simply is a group whose members share a common purpose and a common name." Plaintiffs Consolidated Memorandum in Opposition to Defendants' Motions (June 30, 1978) at 45.

be maintained against a vast aggregation of persons and units without a common bond and unified management structure there is a persisting question: who is to conduct the defense of the lawsuit? This was no problem in *Coronado*, where the Internal Board and a powerful president governed the union being sued. Here, the denomination is now in default in a \$5 million law suit because, under its ecclesiastical law, no one can answer.¹¹

Moreover, even if there were no prohibition against speaking for the denomination, the organization of The United Methodist Church is so diffuse that there is, in fact, no person or entity in a position to act as spokesman, binding others with his or its judgments. The district court has never identified any person whom it believes could act as such a spokesman or be responsible to file an answer and otherwise direct the defense of the denomination.

Similarly, there is no one within the denomination who can require the thousands of local churches, regional conferences and general boards to respond to requests for information.

¹¹ Plaintiffs apparently believe that GCFA can answer for the denomination as a whole, pointing to Paragraph 970(4) of *The Book of Discipline*, which empowers GCFA “[t]o take all necessary legal steps to safeguard and protect the interests and rights of The United Methodist Church.” The paragraph goes on to specify, however, that GCFA is to make provision for legal counsel only at the request of a general agency or bishop—presumably in connection with litigation affecting a constituent body of the Church. Plaintiffs do not explain how GCFA could engage in litigation on behalf of the whole Church when Paragraph 612 of *The Book of Discipline* expressly forbids this. “No person, no paper, no organization has the authority to speak officially for The United Methodist Church, this right having been reserved exclusively to the General Conference under the Constitution.”

See also Judicial Council Ruling No. 485, Appendix E hereto attached, specifically holding that GCFA has no authority to appear for the entire denomination.

Trial preparation and responses to discovery are thus not possible.¹² The district court, again, has not indicated anyone who can assemble the information necessary to conduct litigation for the denomination as a whole.

In *Coronado*, this Court cited, as one of the bases for allowing suit against The United Mine Workers, the fact that “equitable procedure . . . has grown to recognize the need of representation by one person of many, too numerous to sue or be sued,” 259 U.S. at 387, and the union officers in *Coronado* would doubtless have satisfied the requirements of the present rule on class actions. Fed.R.Civ.P. 23. Yet, in the present case, there is not even a “class representative” apparent, let alone one who “will fairly and adequately protect the interests” of the millions of members and thousands of constituent units of The United Methodist Church, not specifically named as defendants. Any judgment entered against the denomination without adequate representation of these units which constitute it, would be a manifest denial of due process. *Hansberry v. Lee*, 311 U.S. 32 (1940).

The second area of procedural difficulty created by the district court’s decision is in the enforcement of any judgment. In *Coronado*, there were well-defined union assets, in particular, a common strike fund. Thus, this Court held, “funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by . . . unions in strikes.” 259 U.S. at 391. In the present case, there are no assets held by the United Methodist Church as an entity, but only the assets of many separate United Methodist entities, held for the specific purposes of

¹² Nevertheless, plaintiffs have served an exhaustive document request on the denomination as a whole, apparently expecting a central source to collect and produce documents from each of the literally thousands of units comprising the United Methodist connection. A copy of this request is bound herewith as Appendix D.

those separate church bodies. By suing the name of an entire denomination, plaintiffs seek to levy against assets held by these separate entities. While plaintiffs have never been specific about the units against whom they would seek to enforce any judgment, they have laid claim to all contributions made for the national and global ministries of the denomination, regardless of which entity holds these funds. Answer to Petition for Hearing in *Barr, supra*, at 43 n.25. Thus, the denomination has been named even though GCFA, which acts as a conduit for over \$60 million in general contributions each year, is already an answering defendant. Plaintiffs apparently hope to levy against the general funds held by all of the general boards, the annual conferences, and perhaps even local church treasuries.¹³

Such a procedure is wholly contrary to due process. It is a basic tenet of our law that persons subject to judgment must be given notice and an opportunity to be heard. *Mullaney v. Central Hanover Trust Co.*, 339 U.S. 306 (1950). Yet the thousands of local United Methodist churches and church related institutions and scores of annual conferences, whose property may be subject to levy by reason of a damage action brought against the Church, have had no notice and no opportunity to be heard, despite their separate jural status.

In *Roman Catholic Archbishop v. Superior Court*, 15 Cal.App.3d 405, 93 Cal.Rptr. 338 (1971), an action for damages was brought against "the Roman Catholic Church." However, the plaintiff specified the church entity against

¹³ In argument on petitioners' motion to dismiss in *Trigg*, counsel for plaintiffs answered the district court's question as to why the Church was sued as an entity as follows: "Because I believe, your Honor, that it is the only entity that has sufficient funds to respond in damages to make the plaintiffs whole in this case." Transcript of August 14, 1978 at p. 37.

whom he expected to collect his judgment—the Roman Catholic Archbishop of San Francisco, a corporation sole. Accordingly, the archbishop was able to obtain summary judgment on the ground that he had nothing to do with the underlying dispute (between plaintiff and some Swiss monks). Plaintiffs in the present case are attempting a similar suit, except that they do not specify the constituent entity against whom they seek recovery. They propose to proceed to judgment and then, if they are successful, litigate only the question of whether the assets of a given unit of United Methodism are denominational assets.

A third problem resulting from an extreme application of the unincorporated association fiction arises when, as here, liability of some or all defendants is predicated on allegations, which those defendants dispute, that they are in "alter ego" or "control person" relationships with one another. Such issues, in a normal setting, would properly turn on evidence adduced on the merits—not be decided at the threshhold of a case at the point of joinder of parties. Here, in the very act of creating under Rule 17(b), a single unified party defendant (The United Methodist Church) out of a vast group of separate religious units, the trial court might be read as having effectively preempted and concluded that issue. In fact the trial court stated:

"[T]he courts have held that though there is a connectional quality to the United Methodist Church, the connection is so thorough and binding that all parts of the organization are controlled by and must respond to the will and authority of The United Methodist Church."

(Emphasis added)

Appendix B, at A-13.

For these reasons petitioners cannot accede to the suggestion of the district court simply to allow the default against the Church to become final, and appeal it separately.¹⁴ The

¹⁴ See oral opinion attached hereto as Appendix B, at A-19, 20.

consequences of such a default judgment, if affirmed, for the thousands of units of the United Methodist Church are potentially devastating. Plaintiffs, by failing to name those units they intend to enforce a judgment against, have attempted to put all the constituent units of the denomination in a position where they must gamble on how the legal capacity of the denomination to be sued as an unincorporated association will be decided and whether their assets will be considered those of the denomination. Yet, as the First Circuit Court of Appeals stated in criticizing a plaintiff for failure to name parties, "we are engaged in a lawsuit, not a poker game. . . ." *Stevens v. Loomis*, 334 F.2d 775, 776 n.1 (1st Cir. 1964).

Petitioners believe that the United Methodist Church in its denominational entirety should not be considered a jural entity. However, even if the denomination is to be held subject to suit for the first time in its 200 year history, there should be procedures determined now to allow for proper representation of the denomination and definition of the assets subject to judgment satisfaction procedures. The decision of the district court, allowing suit to be maintained without consideration of these problems leaving to the two hand-picked persons served with process to respond to these problems as best they can, flatly offends due process. The question of the status of the United Methodist Church is "too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541, 546 (1949).

As in the past where federal procedural questions have involved important constitutional questions, certiorari should be granted here to review the denial of relief by mandamus. *Schlagenhauf v. Holder*, 379 U.S. 104 (1964) (application of Fed. R. Civ. P. 35 regarding medical examinations);

Beacon Theatres, Inc. v. Westover, 359 U.S. 500 (1959) (right to jury).

II. RULE 17(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE CANNOT, CONSISTENT WITH THE CONSTITUTIONAL GUARANTY OF FREE EXERCISE OF RELIGION, BE INTERPRETED TO RENDER LIABLE TO A SUIT FOR DAMAGES A RELIGIOUS DENOMINATION COMPOSED OF MANY SEPARATE ENTITIES WITH NO UNIFIED AUTHORITARIAN STRUCTURE, MANAGING BOARD OR EXECUTIVE OFFICERS AND NO JOINT DENOMINATIONAL ASSETS.

The due process concerns outlined in Part I, above, would exist whenever Rule 17(b) is applied against an "unincorporated association" composed of many separate individuals and organizations without a central executive, joint funds in the association's name, or other quasi-corporate characteristics. The present case, however, involves a religious denomination, and so the Free Exercise Clause of the First Amendment is also seriously implicated here.

In a series of cases culminating in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), this Court has emphasized that the free exercise of religion, protected by the First Amendment, includes not only the right to believe in church dogma, but also the right to organize church government or polity free from intrusion by the state.¹⁵

¹⁵ The Court has also cautioned against civil court interpretation of religious law and polity. "It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith [of large denominations] as the ablest men in each are in reference to their own." *Watson v. Jones*, 13 Wall 679, 729 (1872), quoted in the *Serbian Church* case, 426 at 714-15 n.

By relying on its own interpretation of the ecclesiastical laws of United Methodism, and ignoring the expert opinion of churchmen on these matters, the district court directly contravened this warning.

Thus, in the *Serbian Church* case, the Court refused to allow a state judiciary to overturn the decision of the Serbian Orthodox Church regarding a matter of diocesan reorganization. The Court relied on *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952) for the principle that "religious freedom encompasses the power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine." 426 U.S. at 721-22. Similarly, in its very recent decision in *NLRB v. Catholic Bishop*, U.S. , 47 U.S.L.W. 4283 (March 21, 1979), the Court interpreted the National Labor Relations Act not to accord jurisdiction over church schools to the NLRB, for fear that enforced collective bargaining might impermissibly intrude on religious concerns. Cf. *McClure v. Salvation Army*, 460 F.2d 553, 560 (5th Cir. 1972) (interpreting Title VII of the Civil Rights Act of 1964 not to apply to the employment of ministers by a church).

The decision of the district court below, allowing a multi-million dollar damage action to be brought against the entire United Methodist denomination, poses a serious challenge to the form of government which the denomination has chosen.¹⁶

In order for the denomination, in its entirety, to respond to such suits in an effective fashion, it cannot retain the

¹⁶ The *Trigg* case is only one of a series of lawsuits filed by plaintiffs' counsel involving the "United Methodist Church" as an unincorporated association. Others are *Barr, et al., v. The United Methodist Church, et al.*, No. 404611 (Sup. Ct., San Diego Cty. Cal.), and *Barr, et al. v. State of California*, No. 413987 (Sup. Ct., San Diego Cty. Cal.). The total damages claimed in these suits, all arising from the retirement homes involved in the present case, are well over one half billion dollars.

decentralized and non-authoritarian "connectionalism" which is the hallmark of its government. Rather, in order to protect their individual assets, the separate entities of United Methodism would henceforth require a central executive capable of (1) speaking for the denomination, (2) directing the separate entities to cooperate in litigation, and (3) overseeing their affairs to insure against conduct threatening the denomination with legal action. Moreover, the denomination would be required to establish some clearly demarcated joint or pooled funds so as to distinguish the separate assets of the respective church units from joint denominational assets sought to be subjected to judgment satisfaction efforts. This would effectively overturn 200 years of Methodist tradition. See Leiffer affidavit, App. Ex. 1, ¶ 7. It would put United Methodism into a mold in which it cannot fit without drastic reorganization.

For the separate entities within the denomination to protect their assets, there is only one alternative to centralization, and that is to enforce disaffiliation. This has already begun under the promptings of plaintiffs' Pacific Homes litigation, of which the instant case is but a part. *Yellowstone Conference of The United Methodist Church v. Street*, No. 24487 (Dist. Ct. for the 18th Jud. Dist., Montana, May 17, 1978) involves an attempt by the trustees of an orphanage and hospital long associated with one of the annual conferences of the denomination and heretofore operated by the United Methodist deaconesses, to sever its relationship with the denomination. In their pleadings and in discovery, the Trustees made clear that the only reason for their action was fear that judgments in the California litigation against the United Methodist Church would be levied against the property they administered—causing them to cease operations and withdrawing the hospital and home from the

community. The threat of judgment execution against the separate units of United Methodism has a palpable chilling effect on religious and charitable service.

Of course, the interests of religion are not absolute. However, in dealing with religions, the government may intrude only on behalf of "those interests of the highest order and those not otherwise served." *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972). In the present case, there is no compelling need to force the United Methodist denomination to act as a monolith. The individual units of the denomination are jural entities subject to suit, and those involved in the present case have presumably been named already. Should plaintiffs believe that they have a cause of action against every unit within the United Methodist connection, they may allege a defendant class action. The decision of the district court wholly failed to consider either the impact on the exercise of religion of its application of Rule 17(b) or the alternatives to that application. In order to protect the chosen government of The United Methodist Church, this Court's review is needed.

CONCLUSION

For the reasons stated above, petitioners respectfully pray that their petition for a writ of certiorari be granted.

Respectfully submitted,

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was attempted on behalf of The
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APPENDIX

TABLE OF APPENDICES

Appendix A Order of United States Court of Appeals for the Ninth Circuit (March 13, 1979)

Appendix B Order of United States District Court for the Southern District of California (August 23, 1978)

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Appendix D Plaintiffs' Request for Production and Copying of Documents Directed to "The United Methodist Church"

Appendix E Decision No. 458 dated May 25, 1979 rendered by the Judicial Council of the United Methodist Church interpreting Par. 907.4 of the 1976 Discipline.

FILED
March 13, 1979
Emil E. Melei, Jr. Clerk
U. S. COURT
OF APPEALS

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL W. MILHOUSE and EWING T.
WAYLAND, etc., *Petitioners*,
vs.
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, *Respondent*,
and
CHARLES W. TRIGG, AVETTA TRIGG,
et al., *Real Parties in Interest*.

Before: Judges Wallace and Hug, Circuit Judges

Upon due consideration, the court issues the following
order:

1. The motion to dismiss, quash or strike Petitioner's petition for writ of mandamus is denied.
2. The motion by the National Council of Churches to appear as *amicus curiae* is granted and its "brief" tendered is ordered filed, and
3. The petition for writ of mandamus is denied. Applying the guidelines set forth in *Bauman v. U.S.D.C.*, 557 F.2d 650 (9th Cir. 1977), the Court finds that petitioners' contentions do not warrant the exercise of this Court's discretion. See *Kerr v. U.S.D.C.*, 426 U.S. 394 (1976).

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APPENDIX B

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHARLES W. TRIGG, et al., *Plaintiffs*,
vs.
PACIFIC METHODIST INVESTMENT
FUND, et al., *Defendants*.

Civil Action No.
78-0198-S

ORDER (1) DENYING MOTIONS TO DISMISS
DEFENDANTS UMC, GCFA, PSWAC AND,
FRANCOEUR & COMPANY; (2) GRANTING IN
PART DEFENDANT'S MOTIONS FOR A MORE
DEFINITE STATEMENT; (3) GRANTING IN PART
OBJECTIONS TO EVIDENCE AND MOTION TO
STRIKE; AND (4) DENYING PLAINTIFFS'
MOTION FOR SANCTIONS

On August 15, 1978, the following motions came on for
oral argument before the Court, the Honorable Edward J.
Schwartz presiding:

FILED
ENTERED
August 23, 1978
CLERK U. S.
DISTRICT COURT
SOUTHERN DISTRICT
COURT OF
CALIFORNIA
By Clerk

(1) Motions by Persons Upon Whom Service of Process Was or May Have Been Attempted On Behalf of The United Methodist Church to Dismiss (i) For Lack of Jurisdiction Over The United Methodist Church, (ii) For Failure to State a Claim Under §17 of the Securities Act of 1933, and (ii) For Failure to Plead Fraud With the Required Particularity.

(2) Motions by Defendant General Council on Finance and Administration of The United Methodist Church to Dismiss (i) For Lack of Jurisdiction and Venue, (ii) For Failure to State a Claim Under §17 of the Securities Act of 1933, and (iii) For Failure to Plead Fraud with the Required Particularity.

(3) Motions by Defendant Pacific and Southwest Annual Conference of The United Methodist Church to Dismiss (i) For Failure to State a Claim upon Which Relief Can Be Granted, (ii) For Failure to State a Claim Under §17 of the Securities Act of 1933, and (iii) For Failure to Plead Fraud with the Required Particularity; and for Summary Judgment based on the "No Action" Provision of the Indenture Covering the Collateral Trust Bonds.

(4) Motions by Defendant Francoeur & Company to Dismiss (i) For Failure to State a Claim Under §17 of the Securities Act of 1933, and (ii) For Failure to Plead Fraud with the Required Particularity.

(5) Motions by Persons Upon Whom Service of Process Was or May Have Been Attempted On Behalf of The United Methodist Church, General Council on Finance and Administration of The United Methodist Church, Pacific and Southwest Annual Conference of The United Methodist Church, Pacific Methodist Investment Fund and Francoeur & Company for a More Definite Statement.

(6) Motion to Strike and Objections to Evidence by Persons Upon Whom Service of Process Was or May Have Been Attempted On Behalf of The United Methodist Church and Defendant General Council on Fi-

nance and Administration of The United Methodist Church.

(7) Motion for Sanctions Seeking Attorneys' fees and expenses filed by Plaintiffs.

Sullivan, Jones and Archer, by John L'Estrange, Jr., and Robert V. Vallandigham, Jr., and Witwer, Moran, Burlage & Atkinson, by Samuel W. Witwer, Sr. and Samuel W. Witwer, Jr., appeared for Persons Upon Whom Service of Process Was or May Have Been Attempted On Behalf of The United Methodist Church and the General Conference on Finance and Administration of The United Methodist Church. Musick, Peeler and Garrett, by John R. Browning and William McD. Miller, III, appeared for The Pacific and Southwest Annual Conference of The United Methodist Church. McCutchen, Black, Verleger & Shea, by Bill E. Schroeder, appeared for Francoeur & Co. Hahn, Cazier, Hoegh & Leff, by Peter Longanbach, appeared for Pacific Methodist Investment Fund and various individual defendants.

Milberg Weiss Bershad & Specthrie, by William S. Lerach and Gregg A. Johnson, and Wied, Granby & Alford, by Colin W. Wied and David J. Yardley, appeared for the Plaintiffs.

The Court, after hearing oral argument, and upon consideration of the pleadings, memoranda and evidence submitted by the parties;

HEREBY ORDERS THAT:

(1) The Motion to Dismiss for Lack of Jurisdiction Over Defendant The United Methodist Church is denied;

(2) The Motion to Dismiss for Lack of Jurisdiction and Venue as to Defendant General Council on Finance and Administration of The United Methodist Church is denied;

(3) The Motions of Persons Upon Whom Service of Process was or May Have Been Attempted on Behalf of The United Methodist Church and Defendants General Council on Finance and Administration of The United Methodist Church, Pacific and Southwest Annual Conference of The United Methodist Church and Francoeur & Company to Dismiss for Failure to State a Claim Under § 17 of the Securities Act of 1933 and for Failure to Plead Fraud with Particularity are denied;

(4) The Motions to Dismiss and for Summary Judgment by Defendant Pacific and Southwest Annual Conference of The United Methodist Church are denied;

(5) The Motions for a More Definite Statement by Defendants General Council on Finance and Administration of The United Methodist Church, Francoeur & Company, Pacific and Southwest Annual Conference of The United Methodist Church and Pacific Methodist Investment Fund are granted to the extent of requiring named Plaintiffs to more definitely plead the date(s) which they actually learned of the untrue statements and omissions alleged in the complaint and are otherwise denied;

(6) The Motion to Strike and Objection to Evidence by Persons Upon Whom Service of Process Was or May Have Been Attempted On Behalf of The United Methodist Church and Defendant General Council on Finance and Administration of The United Methodist Church is denied in part and granted in part as ruled upon by the Court during the argument and as set forth in the transcript of the proceedings;

(7) Plaintiffs' Motion for Sanctions seeking Attorney's fees and expenses is denied.

IT IS FURTHER ORDERED THAT (1) the application to permit an interlocutory appeal pursuant to the provisions of 28 U.S.C. 1292(b) from the denial of the motion to dismiss The United Methodist Church for lack of jurisdiction is denied; (2) Plaintiffs are to file an amended com-

plaint forthwith; and (3) Defendants shall file a response to Plaintiffs' amended complaint within twenty (20) days after the service of the amended complaint.

DATED: Aug. 23, 1978

EDWARD J. SCHWARTZ
UNITED STATES DISTRICT JUDGE

Approved as to form.

DATED: Aug. 18, 1978

SULLIVAN, JONES & ARCHER

By JOHN L'ESTRANGE, JR.

On Behalf of All Defendants

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 THE HONORABLE EDWARD J. SCHWARTZ,
 JUDGE PRESIDING

| | | |
|---|--|-------------------------------------|
| CHARLES W. TRIGG, et al., | <i>Plaintiffs,</i> <i>vs.</i> <i>Defendants.</i> | No. 78-0198-S HEARING MOTIONS |
| PACIFIC METHODIST INVESTMENT FUND, et al., | | |

PARTIAL REPORTER'S TRANSCRIPT
 OF PROCEEDINGS
 San Diego, California

August 15, 1978

PATRICIA E. LUX, CSR NO. 3477
 OFFICIAL PRO TEMPORE REPORTER
 UNITED STATES DISTRICT COURT
 United States Courthouse
 940 Front Street
 San Diego, California 92189

as brief as they reasonably can be. And I don't know who wants to start the presentation, but these are, of course, defense motions, and it would be for the defendants to commence.

(Argument by Mr. Witwer, Sr., and Mr. Lerach, reported but not herein transcribed, after which the following proceedings were had:)

THE COURT: Now, we do have a number of motions that are going to be argued, but I think in order to maintain the continuity that has been established by the argument on behalf of defendants and the argument on behalf of plaintiffs, I'm going to proceed and make a ruling on this particular motion, and then we can take a recess and go on to the others.

In this particular motion that is brought in the usual manner, according to the motion and memoranda supplied by the attorneys for persons upon whom service of process was or may have been attempted on behalf of the United Methodist Church, in this motion the counsel for these parties, and I take it on behalf of the United Methodist Church, have moved to dismiss, and particularly to dismiss the United Methodist Church, primarily on the ground that it is only a connectional or religious polity, and not a jural entity.

In response to the motion the plaintiff contends that the Methodist Church is sueable as an unincorporated association, namely a hierarchical, jural entity, and this is done under either 388 of the California Code of Civil Procedure or under Rule 17b of the Federal Rules of Civil Procedure, both of which speak of and indicate the sueability of an unincorporated association.

Now, I've considered the documents filed, the arguments made. I've spent a good deal of time with the Book of Discipline of the United Methodist Church, which is a

rather carefully structured document outlining the—well, doing more than outlining. It outlines, and then fills in with great detail, the organization of the United Methodist Church and its various affiliates, agents, and subordinates, and I must compliment the drafters on the thoroughness of the Book of Discipline, because I think it provides a complete scheme and structure of the organization of the United Methodist Church and gives a substantial indication of the controlling factors and influences that are operative within the United Methodist Church.

Throughout the Book of Discipline it is provided that at every level of authority that any unit which holds property does so in trust for the United Methodist Church, and there is no need to go into the many sections or paragraphs of the Book of Discipline in which that is specifically set forth.

Moving right on from the bottom; that is, from the local churches, on up through every property-holding level there is that provision, that that property is held in trust for the United Methodist Church, which does seem to be some indication of a superior control; that is, I find it difficult to visualize that such a provision were necessary at all if the intention were that there was to be no higher level control over the property of the local units or the intermediate units. Why mention it? Why indicate at all that there is some kind of ultimate beneficiary or trust holding for the benefit of the United Methodist Church?

Contractual participation and responsibility is provided for in the Book of Discipline. Paragraph 670 reads in part as follows: "The United Methodist Church assumes responsibility for all contractual agreements made by one of its constituent members (Evangelical United Brethren and Methodist Churches), with an affiliated autonomous church."

Now, as against that, Mr. Witwer has pointed out another provision, that what is contained in one of the paragraphs

of the Book of Discipline, that specifically denies responsibility for a particular—or rather in a particular specified situation. I believe that was under paragraph 702, subsection 2.

Now, the constitution of the United Methodist Church provides in Article 6 that, quote: "Titles to properties in The Evangelical United Brethren Church and the Methodist Church shall, upon consummation of the union, automatically vest in The United Methodist Church."

Again, the question was raised, I suppose, why use that kind of language at all if there is no legal entity that could be considered under the name United Methodist Church? Why is it necessary to say that that property vests in the United Methodist Church?

Now, among its various properties, according to the Book of Discipline, paragraph 2445, the United Methodist Church owns and controls, "schools, colleges, universities, hospitals, homes, orphanages, institutes, and other institutions," and a good deal of attention has been paid in the papers filed to the fact that the United Methodist Church has arranged, through its General Council on Finance and Administration, for a blanket insurance policy covering various properties and activities of the Church, in which the United Methodist Church itself is a named insured.

According to paragraph 1701 of the Book of Discipline, the United Methodist Church has employees subject to pension plans.

Subparagraph 2 of paragraph 1701 provides: "The general supervision and administration of the pension and benefit funds, plans, and programs of the United Methodist Church, subject to the direction, supervision, and control of the board, shall be conducted by and through the headquarters office."

As is common with most church organizations, application was made to the Internal Revenue Service for an exemption

from Federal taxation, and it was applied for and issued in the name of the United Methodist Church and its affiliated organizations.

A good deal of discussion has taken place in the papers filed, and in argument this morning, with regard to the function of the General Council on Finance and Administration, and it has been pointed out that this is a very active body, or agency, entity, or whatever it might be called, corporation, evidently, which exercises a permeating administration and control of certain aspects of finances of the Methodist hierarchical structure. It is true, evidently, as stated by Mr. Witwer, that it administers only approximately five or five and a half percent of the total collections or givings obtained at the local level, but when that small percentage is translated into dollars, it comes to some sixty or sixty-five million dollars, a very substantial sum, and certainly as to that fund, or those funds, the General Council on Finance and Administration is the fiscal arm of the United Methodist Church.

The bishops of the Church who form the General Conference, if one looks at the Book of Discipline, have rather broad governing powers and have a responsibility under paragraph 513 of the Book of Discipline, quote: "To lead and oversee the spiritual and temporal affairs of the United Methodist Church," and so on, closed quote.

Some reference has been made to the superintendency of the bishops, and I think paragraph 501 of the Book of Discipline is worth reading in full. Paragraph 501 is entitled: "Task—The task of superintending in the United Methodist Church resides in the office of bishop and extends to the district superintendent with each possessing distinct responsibilities. From apostolic times, certain ordained persons have been entrusted with the particular tasks of superintending. Those who superintend carry primary responsibility for ordering the life of the Church. It is their task to enable the gathered Church to worship and to evangelize faithfully."

Up to this point it's certainly a statement of religious work and responsibility. Paragraph 501 goes on: "It is also their task to facilitate the initiation of structures and strategies for the equipping of Christian people for service in the Church and in the world in the name of Jesus Christ and to help extend the service in mission. It is their task, as well, to see that all matters, temporal and spiritual, are administered in a manner which acknowledges the ways and the insights of the world critically and with understanding while remaining cognizant of and faithful to the mandate of the Church. The formal leadership in the United Methodist Church, located in these superintending offices, is an integral part of the system of an itinerant ministry."

It has been brought to the attention of the Court, by reason of the points and authorities filed and the cases cited, that the United Methodist Church has participated in numerous litigations as both party plaintiff and party defendant, asserting its property rights, its organizational authority, and the courts which have considered the legal status of the United Methodist Church have found it to be a hierarchical church organization, as distinguished from a merely congregational form of organization, and the courts that have addressed the problem have held that the United Methodist Church is a jural entity possessing property rights and entitled to both legal and injunctive relief.

Furthermore, the courts have held that though there is a connectional quality to the United Methodist Church, the connection is so thorough and binding that all parts of the organization are controlled by and must respond to the will and authority of the United Methodist Church.

Now, of course, it is argued that the cases in which the United Methodist Church has appeared as a party deal with purely internal church matters. This may be true, but it appears to this Court that it makes very little difference with regard to the problem of jural entity whether the

United Methodist Church is suing as a jural entity, as an unincorporated association, which it's been held to be, to compel action in accordance with its Book of Discipline, or whether it is suing or being sued by reason of other activities which are permitted and engaged in in accordance with the Book of Discipline, and in the administration of the work of the Church, and pursuant to its organizational arrangements.

Now, it is contended on behalf of the United Methodist Church that constitutional principles affecting the establishment and free exercise clauses of the United States Constitution should be applied to preclude this suit, specifically as against United Methodist Church, named as a party defendant.

I think the courts, including the United States Supreme Court, have held otherwise. It's true, not specifically on facts identical with those before this Court, but there have been situations in which suits have been permitted, even against the argument that freedom of religion would somehow be affected or curtailed.

A suit has been allowed against a religious organization, specifically for a cause of action arising out of the Securities Act of the United States.

Now, churches, of course, may exercise both religious and temporal powers, and the United Methodist Church, through its wide ranging, world-wide activities is, in my view, fully on the temporal scene. Its property holdings and monetary collections involve certainly millions, and perhaps billions, of dollars. In matters affecting its property rights and alleged security law violations, the United Methodist Church is able to assert its legal entitlements and is fully answerable in the courts of the United States.

Accordingly, the motion that is brought for dismissal as to the parties or individuals served on behalf of the United

Methodist Church is denied, and if this is a motion to dismiss out the United Methodist Church, it is denied in toto.

MR. WITWER: May I address the Court on another motion?

THE COURT: Yes, certainly. Does it relate to the ruling the Court has just made?

MR. WITWER: Yes.

I would like to thank you, your Honor.

I would like, on behalf of the Methodist Church, to certify under Federal Rule 1292, the importance of the question, and I believe that if that could be a part of your opinion it would expedite the appeal to the Ninth Circuit and would certainly expedite the ultimate disposition of the litigation to avoid any unnecessary delay.

THE COURT: All right.

Mr. Lerach, do you wish to be heard on this?

MR. LERACH: Does your Honor wish to hear argument on this? Because I anticipated this might occur, and I have a number of reasons why I believe it would be a very serious error.

THE COURT: Let's make it very brief, counsel. I don't want extensive argument.

MR. LERACH: Very briefly, your Honor. Your Honor, there will be a more fulsome and complete factual record at the termination of this than there will be if the matter is to be reviewed on appeal.

Your Honor, I have already been involved in an expedited certification to the Supreme Court, before Judge Turrentine, regarding the jury trial. Mr. Weiss can give me the precise dates, because I don't have them. But that issue has

been briefed and awaiting argument for months, and it must be almost two years since Judge Turrentine issued that ruling.

There is no substantial ground for difference of opinion with respect to the decision you have just made. It is right on the facts. It is fully supported by a wealth of decisional law. To permit an interlocutory appeal of this order will do nothing other than delay this case for a minimum of two and a half years, and that is an injustice in the face of the age of the plaintiffs.

MR. WITWER: Your Honor, with complete deference, and our appreciation that you have given to the case the great care that you obviously have, there are points of disagreement, and I can't agree with Mr. Lerach on them, that I think should be reviewed, but I think that one of the dilemmas that I should share with your Honor, at this point, is that so far as I know, I know of no one that can file an answer in this case on behalf of the denomination known as the United Methodist Church, if this were not to be appealed and finally determined somewhere up the line. Indeed, I don't know what could be done, because in the whole structure of this denomination—

THE COURT: Who has appeared for United Methodist in various litigations?

MR. WITWER: I am appearing here today on behalf of two people.

THE COURT: I'm inquiring, Mr. Witwer, who has appeared for United Methodist Church in the various litigations in which they have appeared?

MR. WITWER: There has never been a litigation like this, your Honor.

THE COURT: You're not answering my question. Who has appeared?

MR. WITWER: There have been no appearances on behalf of the denomination, excepting district superintendents, in a local property dispute involving the question of whether or not the church property could be taken out in a schismatic withdrawal. One reported case named the United Methodist Church as a party plaintiff without any authorization, did not make it an entity, but I know of no case, in all of the reported cases, where U.M.C. has ever appeared.

THE COURT: Did the United Methodist Church move to dismiss that case?

MR. WITWER: That case was decided by a court in Indiana, yet I don't know that it even came to the attention of people throughout the whole denomination.

It was mentioned in the masthead of the case, U.M.C., by the district superintendent who brought it. He thought he was doing the right thing. But our problem is simply that we have no one in the structure of this church that has the authority to enter an answer in this court or any other court.

This is not an exaggeration, your Honor. I'm not trying to be dramatic. I'm trying to share with you the predicament we would face if we're not afforded an opportunity to raise this question in the Circuit Court of Appeals as promptly as we can.

We think it's a case that ought not to be delayed. I don't know what the status is of interlocutory petitions, but on a matter of this issue I would hope, as has been the case in my circuit, that it would receive expedited attention, and we would request that.

There is no one, to my knowledge, in United Methodism that has the authority to come in here and file an action. We have come in on behalf of the two bishops that were served to point out that they are not representatives, that they have no authority, and that they could not be served properly. And this was another part of our motion, that there isn't a thing in Methodism that makes that authority recipient, under Rule 4d of the Federal Rules of Civil Procedure.

I believe in the long run that the interests of justice in this case will be greatly advanced if this question can be resolved, and I urge your Honor to give us the necessary certification, because certainly this is a case of great public importance.

THE COURT: Motion is made here under Title 28, section 1292, to treat this an an interlocutory decision for the purpose of taking a direct appeal from this particular order. I presume it's brought under subsection b of 1292, which provides in part as follows—

MR. WITWER: Yes, your Honor.

THE COURT: "When a district judge in making, in a civil action, an order not otherwise appealable under this section shall be of the opinion that such order involves a controlling question of law, as to which there is a substantial ground for difference of opinion, and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state, in writing, in such order."

Now, certainly as far as the question of a material or substantial ground for differences of opinion, I would have to grant that that does appear and certainly has been well argued this morning.

When it comes, however, to the question of whether or not such an interlocutory appeal would, in the words of the section, "materially advance the ultimate termination of the litigation," closed quote, I have rather grave doubt.

One of the very troubling parts of considering this motion at all, and in ruling on it, is the considerable amount of evidence that this Court has had to consider in a very compressed time period and under conditions that do not give an opportunity for adequate preparation or presentation by either side, in a trial atmosphere in which the evidence and contentions can be sorted out and considered by the trier of fact with greater care and thoroughness.

I think the entire matter, as to the jural entity and the liability, if any, of the United Methodist Church, can certainly be tested out in a more complete fashion if all of the evidence is presented in the manner in which it would be at trial.

I further have in mind the situation of the plaintiffs that I adverted to earlier, namely that if they have a claim, they are entitled to the earliest reasonable determination of their claim or their respective claims as can be provided by the courts.

I don't think that an interlocutory appeal would expedite. I think, on the other hand, it would probably delay the ultimate determination of the merits of the suit here.

Accordingly, the motion for interlocutory certification is denied.

Now, Mr. Witwer has presented to the Court his pronounced dilemma as to what, if anything, the United Methodist Church should do, in view of the fact that he contends, sincerely, I'm sure, that it is not a jural entity: "What shall I do with regard to appearance or participation at all in the proceedings?" I suppose one way to do it, and I cer-

tainly don't advise this, but if United Methodist Church and its counsel feel that it is not a jural entity, that it is not subject to the process of the Court, it could simply do nothing. I would assume that in the natural course of events a default judgment against the United Methodist Church would be sought, possibly obtained, and I think at that point the United Methodist Church would perhaps have available to it a contest of such default and an appeal from the determination of this Court.

I think if that course were followed, it would be as a separate facet of this suit, which would be carved out, and it would be subject to appeal and resolution, and that the balance of the suit brought on behalf of the plaintiffs could go forward without further hindrance or delay.

We've been going now for quite a while. I wonder if we should simply take a lengthy recess; that is, for the noon hour, and resume after lunch, or whether we could take a short recess now and proceed. I don't really care, but counsel might have some suggestion.

MR. L'ESTRANGE: Your Honor, on behalf of our clients, I think we would prefer to take a more lengthy lunch recess.

MR. LERACH: I was going to suggest the contrary, but that's all right.

THE COURT: It's 25 minutes of 12 now. Why don't we recess until, say, 1:30. Would that be agreeable?

MR. L'ESTRANGE: That would be fine, your Honor.

MR. LERACH: Fine, your Honor.

THE COURT: I trust the arguments this afternoon will be shortened. I felt this was important.

MR. LERACH: Yes, sir. They will be very short.
(Recess.)

APPENDIX D

WILLIAM S. LERACH
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

CHARLES W. TRIGG, et al.,

Plaintiffs,

vs.

PACIFIC METHODIST INVESTMENT
FUND, et al.,

Defendants.

CV No. 78-0198-S
PLAINTIFFS'
REQUEST FOR
PRODUCTION
AND COPYING
OF DOCUMENTS

TO: DEFENDANT, THE UNITED METHODIST
CHURCH AND ITS ATTORNEYS; AND ALL
OTHER PARTIES AND THEIR COUNSEL OF
RECORD:

Plaintiffs hereby request, pursuant to Rule 34 of the
Federal Rules of Civil Procedure, that Defendant, The
United Methodist Church produce and permit Plaintiffs, by

their attorneys, to inspect and copy documents designated below in its possession, or subject to its control.

Plaintiffs request that Defendant, The United Methodist Church, produce, give access, and make available to Plaintiffs by their attorneys, at the offices of Milberg Weiss Bershad & Specter, 1720 Central Federal Tower, 225 Broadway, San Diego, California, or such other place as Plaintiffs may designate or as Plaintiffs and the United Methodist Church may agree upon, and permit Plaintiffs by their attorneys to inspect and/or copy the documents hereinafter described at 9:30 A.M., September 25, 1978.

This request for production of documents is intended to cover all documents in the possession of Defendant, the United Methodist Church, its agents, employees, officers, attorneys, and other representatives, or subject to their custody and control, wherever located.

DEFINITIONS

As used herein:

1. "Document" is used in the broadest possible sense and means, without limitation, any written, printed, typed, photostated, photographed, recorded, or otherwise reproduced communications or representations, including letters, words, numbers, pictures, sounds or symbols, or combinations thereof, or any copies bearing notations of marks not found on the original including but not limited to all correspondence, memoranda, reports, financial reports, notes, records, letters, envelopes, telegrams, messages (including reports, notes and memoranda of personal or telephone conversations and conferences), studies, analyses, contracts, agreements, projections, working papers, summaries, statistical statements, financial workpapers, accounts, analytical records, reports and/or summaries of investigations, opinions

or reports of consultants, appraisals, trade letters, press releases, comparisons, books, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, forecasts, drawings, diagrams, instructions, minutes of all other communications of any type, including inter and intra-office communications, purchase orders, questionnaires, and surveys, charts, graphs, photographs, phonograph, tape or other recordings, punch cards, magnetic tapes, discs, data cells, drums, print-outs, all other data compilations from which information can be obtained (translated, if necessary, by defendants through detection devices into usable form), and any other writings or documents of whatever description or kind, including copies of any of the foregoing now in the possession, custody or control of you, your counsel, agents, employees, and any and all persons acting on your or their behalf.

When the word "documents" is used it also includes all copies of such documents.

2. If you withhold any document covered by this Request under claim of privilege, please furnish a list identifying each document for which the privilege is claimed, together with the following information: date, sender, recipient, persons to whom copies were furnished together with their job titles, subject matter, basis on which privilege is claimed and the paragraph of this Request to which such documents respond.

3. The time period covered by this Request, except where otherwise indicated is from the time of the formation of Pacific Homes or its predecessor up to and including the date of this Request.

4. As used herein, "UMC" means The United Methodist Church and its predecessor The Methodist Church; "CFA" means Council on Finance and Administration of the United

Methodist Church and its predecessor the Council on World Service and Finance; "PSWAC" means Pacific Southwest Annual Conference of The United Methodist Church and its predecessor the Southern California-Arizona Annual Conference of The United Methodist Church; "HWMD" means the Health and Welfare Ministries Division of the General Board of Global Ministries of The United Methodist Church and includes its predecessor the Methodist Board of Homes and Hospitals; "PMIF" means Pacific Methodist Investment Fund; "BOC" means the Board of Control Re: Pacific Homes Corporation; "MIF" means the Methodist Investment Fund which was administrated by the National Division of the Board of Missions and includes any and all successor funds or organizations to MIF such as the United Methodist Development Fund; "GBGM" means the General Board of Global Ministries of The United Methodist Church and includes any predecessor body to the GBGM such as The Board of Missions of the Methodist Church; "NAHWM" means the National Association of Health and Welfare Ministries of the United Methodist Church and includes any predecessor body to the NAHWM.

The documents requested are:

1. All documents relating to the affiliation, certification, and accreditation, of Pacific Homes, or any Home operated by Pacific Homes, by the HWMD, the Health and Welfare Ministries General Board of Global Ministries, or successors or predecessors of either or any unit of either performing a similar function.
2. All documents which relate in any way to:
 - a. The financial condition of Pacific Homes, or any Home operated by Pacific Homes.
 - b. The operations of Pacific Homes, or any Home operated by Pacific Homes.

- c. The fee structure of Pacific Homes, or any Home operated by Pacific Homes.
- d. The management of Pacific Homes, or any Home operated by Pacific Homes.
- e. The relationship of Pacific Homes to PSWAC, PMIF, UMC or CFA.
3. All documents which relate in any way to:
 - a. The financial condition of PMIF.
 - b. The operations of PMIF.
 - c. The management of PMIF.
 - d. The relationship of PMIF to PSWAC, MIF, UMC or CFA.
4. All documents which relate in any way to:
 - a. The financial condition of PSWAC.
 - b. The operations of PSWAC.
 - c. The management of PSWAC.
5. All documents which relate in any way to:
 - a. The financial condition of UMC.
 - b. The operations of UMC.
 - c. The Management of UMC.
6. All documents which relate in any way to:
 - a. The financial condition of MIF.
 - b. The operations of MIF.
 - c. The management of MIF.
7. All documents (including pamphlets, books, releases, brochures, etc.) which explain, discuss or relate to the organization, structure, duties, function and work of:
 - a. HWMD
 - b. GBGM

- c. PMIF
- d. PSWAC
- e. BOC
- f. MIF
- g. NAHWM
- h. CFA
- 8. All documents (including pamphlets, books, releases, brochures, etc.) which explain, discuss or relate to the relationship between:
 - a. HWMD and UMC
 - b. HWMD and CFA
 - c. GBGM and UMC
 - d. GBGM and CFA
 - e. PMIF and PSWAC
 - f. PMIF and BOC
 - g. PMIF and Pacific Homes or any Home operated by Pacific Homes
 - h. MIF and UMC
 - i. MIF and CFA
 - j. MIF and GBGM
 - k. BOC and PSWAC
 - l. BOC and Pacific Homes or any Home operated by Pacific Homes
 - m. PSWAC and UMC
 - n. PSWAC and CFA
 - o. PSWAC and GBGM
 - p. PSWAC and Pacific Homes or any Home operated by Pacific Homes

- q. NAHWM and Pacific Homes or any Home operated by Pacific Homes
- r. NAHWM and UMC.
- s. NAHWM and HWMD.
- t. NAHWM and GBGM.
- 9. All copies of advertisements for Pacific Homes or any Home operated by Pacific Homes, all promotional and explanatory literature for Pacific Homes or any Home operated by Pacific Homes and all documents used for the solicitation of potential residents of Pacific Homes or any Home operated by Pacific Homes.
- 10. All documents and copies thereof that relate in any way to the drafting, designing, creating, printing, or distribution of advertisements or promotional and explanatory literature for Pacific Homes or any Home operated by Pacific Homes and all documents that relate to the source of funds used for the foregoing.
- 11. All documents that relate in any way to the drafting, designing, creating, printing, or distribution of advertisements or promotional and explanatory literature for Homes sponsored by the UMC, Homes affiliated with or certified by the HWMD, Homes affiliated with or members of NAHWM.
- 12. All documents and copies thereof that relate in any way to the raising or attempts to raise, even if unsuccessful, of capital by Pacific Homes, or by the UMC, PMIF, CFA, MIF, or PSWAC, to fund or assist Pacific Homes, including but not limited to:
 - a. The obtaining of loans, borrowings, advances, or extensions of credit of any kind, whether secured or unsecured.
 - b. The sale of bonds, debentures, investment contracts, real property or securities of any kind whatsoever.

13. All correspondence between any officer, director, employee, agent, trustee, official, Bishop, Minister or any other representative of the UMC, Pacific Homes, CFA, HWMD, GBGM, PMIF, BOC, MIF, or PSWAC, and you or any officer, director, employee, agent, trustee, official or any other representative of your organization, relating in any way to Pacific Homes or any Home operated by Pacific Homes.

14. All correspondence from or to any third party* to or from any officer, director, employee, agent, trustee, official, Bishop, Minister or any other representative of the UMC, Pacific Homes, CFA, HWMD, GGM, PMIF, BOC, MIF, or PSWAC relating in any way to Pacific Homes or any Home operated by Pacific Homes.

15. All correspondence and copies thereof between third parties* that relate in any way to Pacific Homes or any Home operated by Pacific Homes.

16. All notes, memoranda or minutes of meetings or conversations that relate in any way to PMIF, BOC, Pacific Homes or any Home operated by Pacific Homes.

17. Copies of all tax returns or other documents filed by UMC, PSWAC, HWMD, GBGM, PMIF, MIF, or CFA with the United States Government, Department of Internal Revenue or any state or territory of the United States or any county or local subdivision in which any claim was made that the UMC, PSWAC, HWMD, GBGM, PMIF, MIF, or CFA was exempt from taxation.

18. All documents relating to the payment for advertisements for Pacific Homes or any Home operated by Pacific

* "Third Party" means any entity or person other than someone affiliated with the UMC, CFA, HWMD, GBGM, PMIF, BOC, MIF, PSWAC or Pacific Homes.

Homes appearing in any publication published by the Methodist Publishing House, its predecessors or successors, including but not limited to a publication entitled *Together*.

19. All documents which relate in any way to the status of Pacific Homes, PSWAC, UMC, HWMD, GBGM, PMIF, MIF, and the CFA as exempt from taxation, whether federal, state or local.

20. All documents that relate in any way to the operation of the BOC, including but not limited to minutes of BOC meetings, notes or memoranda of communications between officers, members, directors, agents, and employees of the BOC and you or your organization or any officer, director, employee, agent, trustee, official, or any other representative of Pacific Homes, or between the BOC, its agents, members, employees, officers, directors, and third parties, including but not limited to any defendants named in the above entitled action.

21. All documents that relate in any way to the 1954 Report or study prepared by Huggins & Co., including but not limited to the reports or copies of the reports themselves, correspondence between Huggins & Co. and Pacific Homes, UMC, CFA, HWMD, GBGM, PSWAC or any other third party, any documents used to prepare the report or study.

22. All documents that relate in any way to the sale by PMIF of \$5 million principal amount of 7%-8½% collateral trust bonds, including but not limited to all copies of the offering circulars, and all documents evidencing communications by or between Pacific Homes, PMIF, BOC, PSWAC, UMC, CFA, MIF, HWMD, GBGM, any federal or state securities agencies, the Securities and Exchange Commission, the Wisconsin Commissioner of Securities, or the California Corporations Commissioner, Chapman & Cutler,

Francoeur and Company, Musick, Peeler & Garrett, Roland Maxwell, Coopers and Lybrand and all documents evidencing communication between said entities and any third parties. All documents that relate in any way to Pacific Homes or any Home operated by Pacific Homes, accommodation fees, commissions, debt service or projected cash flow created or obtained in connection with the \$5 million bond offering of PMIF and all documents that relate to any investigation made of Pacific Homes in connection with the \$5 million bond offering by PMIF.

23. All documents published or distributed by Pacific Homes or any Home operated by Pacific Homes, to residents or potential residents, employees, agents, regulatory authorities, administrative authorities, tax authorities or any other third parties or entities.

24. All documents which relate in any way to the establishment, operation or financial condition of hospitals or retirement homes affiliated with, certified by or sponsored by:

- a. HWMD;
- b. GBGM;
- c. The Methodist Board of Homes and Hospitals;
- d. The UMC; and
- e. PSWAC;

25. All documents in your possession, custody or control relating in any way to the membership of Pacific Homes, or any Home operated by Pacific Homes, the composition of the Board of Directors of Pacific Homes, the management of Pacific Homes, the operation of Pacific Homes, its by-laws, articles of incorporation, financial statements, advertisements of Pacific Homes and any other documents mentioning or discussing Pacific Homes or any Home operated by Pacific Homes.

26. All documents that relate in any way to the Elmer Fox Westheimer & Company Report entitled Council on Finance and Administration, Southern California-Arizona Annual Conference of the United Methodist Church—Operations Review and Organization Study of Pacific Homes—June 4, 1974, including but not limited to all copies of the Report, correspondence, financial statements, inter-office memoranda, documents furnished or provided to Elmer Fox Westheimer & Company.

27. All documents that relate in any way to the Cresup, McCormack and Paget study, including but not limited to documents furnished or provided to the individuals or entities who made this study and communications between the individuals or entities who made this study and Pacific Homes, UMC, HWMD, GBGM, CFA, PSWAC, and any third parties.

28. All documents that relate in any way to other reports or studies made or conducted concerning the operation, management, or financial condition of Pacific Homes or any Home operated by Pacific Homes.

29. All documents which relate in any way to the payment or transfer of money or any asset or thing of value by Pacific Homes or any Home operated by Pacific Homes to the UMC, PSWAC, HWMD, GBGM, PMIF or the CFA for any purpose.

30. All documents which relate in any way to providing care or a residence by Pacific Homes or any Home operated by Pacific Homes to any present or former employee of the PSWAC (or any subordinate body thereof), UMC (or any subordinate body thereof) or the CFA (including any Methodist minister) or dependent, widow or child of such person.

31. All documents which relate to the income or assets of, or income or assets under the control of, the PSWAC, UMC, HWMD, GBGM, PMIF, MIF, or the CFA including, but not limited to investments, cash, real property, general church funds, donations, gifts or bequests for the time period January 1, 1974 to the present.

32. All documents which relate in any way to information provided by you to Methodist Churches, agencies or ministers relating to Pacific Homes or any Home operated by Pacific Homes or any retirement or hospital facility affiliated with the Methodist Board of Homes and Hospitals (or any predecessor or successor entity) including all such documents that indicate that any money, credit or other thing of value was to be provided to any person or entity in return for referring any person to Pacific Homes or any of its Homes or any other retirement facility affiliated with the Methodist Board of Homes and Hospitals.

33. All documents which relate in any way to:

(a) All mergers or unions of religious organizations which resulted in the present United Methodist Church, including but not limited to the 1939 combination of the Methodist Episcopal Church, the Methodist Protestant Church and the Methodist Episcopal Church, South and the 1968 union of the Methodist Church and the Evangelical United Brethren Church;

(b) Titles to property in the name of the United Methodist Church or predecessor churches including those where the title is held in trust for the UMC;

(c) The operations of the Methodist Board of Homes and Hospitals;

(d) The operations of the HWMD;

(e) Meetings of the Council of Bishops and communications between any member Bishop and any other person relating to the temporal affairs of the church;

(f) Any jurisdictional conferences of the Western conferences;

(g) The operations and the meetings of the BOC, PMIF (and its Board), PSWAC, the PSWAC Council on Finance and Administration and the PSWAC conference Board of Pensions;

(h) The operations of the Methodist Churches' superintending offices;

(i) The operations and meetings of the PSWAC Cabinet;

(j) The operations and meetings of the General Conference;

(k) Contractual agreements between the UMC and any affiliated autonomous church;

(l) The operations and meetings of the CFA including its Executive Committee as they relate to the duties set forth in §§ 906 and 907 of the Book of Discipline;

(m) The use of the word "Methodist" by any corporation or other business unit;

(n) The Methodist Corporation;

(o) The holding of any property by any local church, charge, or agency or institution of church in trust for the UMC; and

(p) The receipt and disbursement of general church funds.

34. All proposed, suggested, and actual advertising sales or promotional materials prepared by or on behalf of the Methodist Board of Homes and Hospitals or the HWMD which relate to Homes or Hospitals affiliated in any way with the HWMD, the UMC or any of its institutions or agencies and all documents relating to the use and distribution of said material.

35. Copies of every document in your possession or under your control which bear the name "Methodist Church" or "United Methodist Church" including the following:

- a. Contracts;
- b. Bank account statements;
- c. Letterhead;
- d. Leases;
- e. Checks, cancelled or otherwise;
- f. Any filing with any governmental entity;
- g. Correspondence signed or written by any person on behalf of the UMC; and
- h. Any will, trust or similar instrument.

36. All documents relating to the sale of life care contracts, pre-paid continuing care fee, pre-paid lifetime care fees, or accommodation fees by any Home affiliated with or certified by the HWMD.

37. All documents distributed generally to Homes affiliated with or certified by the HWMD that were, or would have been, in the ordinary course of business, distributed to Pacific Homes or any home operated by Pacific Homes.

38. All prospectuses, offering circulars or similar sales documents relating to the sale of securities by:

- a. Homes or Hospitals affiliated with or certified by the HWMD;
- b. Institutions sponsored by, related to, or affiliated with the UMC.

39. All Annual or other periodic reports of PSWAC, HWMD, PMIF, BOC, MIF, and GBGM.

40. All annual reports or other periodic reports of NAHWM.

41. All communications between NAHWM and Pacific Homes or any Home operated by Pacific Homes.

42. All communications between NAHWM and HWMD, GBGM, PSWAC, CFA, UMC that relate to Pacific Homes or any Home operated by Pacific Homes.

43. All documents relating to any borrowing, or sale of securities, by Pacific Homes from or to Connecticut General Life Insurance Company.

DATED: August 17, 1978

MILBERG WEISS BERSHAD & SPECTHRIE

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APPENDIX E

THE UNITED METHODIST CHURCH
Judicial Council

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Charleston, W. Va. 25304

SECRETARY
HOOVER RUPERT
212 South Park Street
Kalamazoo, Michigan 49006

As Secretary of the Judicial Council of the United Methodist Church, I certify that the following decision was rendered by the Council in session May 25, 1979 in Chicago, Illinois:

**IN RE: AUTHORITY OF THE GENERAL COUNCIL
ON FINANCE AND ADMINISTRATION TO
REPRESENT THE UNITED METHODIST
CHURCH IN LITIGATION.**

DECISION: Paragraph 907.4 of the *1976 Discipline* does not delegate to the General Council on Administration and Finance either the authority or the duty to sue, or to file an answer or to otherwise plead, on behalf of the United Methodist Church as a denomination.

This is Decision No. 458 of the Judicial Council, and is dated in our records, May 25, 1979.

DR. HOOVER RUPERT
Secretary, The Judicial Council
The United Methodist Church

Certified, May 29, 1979.
Kalamazoo, Michigan

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